

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/28/2011 has been entered.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Drawings***

The drawings were received on 1/28/2011. These drawings are acceptable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-19, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Noakes et al. (5,121,884).

Noakes et al. shows a portable handheld electrostatic spraying device comprising: a housing (2) having a first end and a second end, the first end comprising a handle (4) for a user to grasp; a high voltage generator (26) having a high voltage output; at least one dispensing nozzle (12) positioned near the second end of the housing, at least one reservoir (14), a tube (22, 20) connecting the at least one dispensing nozzle and the at least one reservoir, the tube configured to convey the materials to be sprayed from the at least one reservoir to the at least one dispensing nozzle, means coupling (32) the high voltage output of the high voltage generator to the

materials so that the voltage is conducted through the materials to the materials present at the at least one dispensing nozzle, at least one ring (60) surrounding the at least one dispensing nozzle, the at least one ring coupled to the high voltage generator (via the housing), so that the at least one ring develops a high voltage of the same polarity as that applied to the materials being sprayed and generates an electric field in the vicinity of the at least one dispensing nozzle during spraying operations (column 5, lines 42-55).

It is noted that the last paragraph of the claim is being considered a functional recitation of the intended use of the claimed invention that occurs when the claimed invention is operated. Since no specific structure is being claimed in that last paragraph that causes the electrostatic spraying device to impart an electrostatic charge to the materials issuing from the at least one nozzle to focus the material being sprayed and to generate an iontophoresis effect to enhance material transport through skin when a forward extremity of the ring is brought within a distance of 2 cm of the skin of an earthed subject to be sprayed, and the device of Noakes includes all structural elements of the claimed invention; therefore, the device of Noakes is inherently capable of performing the intended use recitations of the last paragraph of the claim when it forward extremity of the ring is brought within a distance of 2 cm of the skin of an earthed subject.

Regarding claim 18, it is noted that the ring (60) of the Noakes reference is as much of an annular cable as the ring (50) of the present invention is an annular cable (see the figures). Therefore, the examiner is considering the ring 60 of Noakes to be structurally equivalent to the annular cable of the claimed invention.

Regarding claim 19, the means for supplying the materials to the nozzle passively is the trigger 46.

Regarding claim 22, the at least one ring is made of an electrically semi-insulating material (the non conducting material and the conductive charge that deposits on the ring makes up a semi-insulating material), and since it is charged with the same voltage as the material to be dispensed, it forms a potential in a location forward of the nozzle, just as the present invention does.

Regarding claim 23, the replaceable cartridge of the device of Noakes includes: the reservoir 14, that at least one nozzle 12 and tube 22, and the at least one ring 60. It is noted that these elements are all removable and replaceable.

### ***Response to Arguments***

Applicant's arguments filed 1/28/2011 have been fully considered but they are not persuasive.

The applicant argues that Noakes does not teach the annular shroud 60 being coupled to the high voltage source and depends on charges particles accumulation on the shroud to give it its charge. The examiner agrees that the shroud requires accumulation of charged particles on it to create an electric field in the vicinity of the dispensing nozzle. In the Noakes reference, it clearly points out that the charged particles accumulate on the shroud 60 to create an electric field. The examiner disagrees that the shroud 60 is not coupled to the high voltage source. The examiner is interpreting the shroud 60 to be mechanically coupled to the high voltage source by

element 2, the housing. The claim merely requires that the nozzle ring be coupled to the high voltage source, and in Noakes, the nozzle ring is mechanically coupled to the high voltage source. The Shroud 60 accumulates charged particles so that during spraying the shroud is charged and creates an electric field during spraying.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Boeckmann whose telephone number is (571)272-2708. The examiner can normally be reached on 8:00- 5:00, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason J Boeckmann/  
Examiner, Art Unit 3752  
3/9/2011